

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-180021

August 26, 1980

TO: HEADS OF AGENCIES AND DEPARTMENTS, HEADS OF LABOR
ORGANIZATIONS, AND AUTHORIZED CERTIFYING AND
DISBURSING OFFICERS

SUBJECT: Procedures for Decisions on Appropriated
Fund Expenditures Which Are of Mutual
Concern to Agencies and Labor Organizations

Attached is a copy of the final rule amending GAO's procedures for requesting decisions in Federal labor-management relations matters in light of the passage of Title VII of the Civil Service Reform Act of 1978. This rule provides procedures for requesting decisions and advisory opinions from GAO on appropriated fund expenditures which are of mutual concern to agencies and labor organizations. It will be of particular interest to all certifying and disbursing officers, agency labor-relations personnel and legal staff, neutral parties authorized to administer the provisions of Title VII of the Civil Service Reform Act, and representatives of labor organizations having exclusive recognition in Federal agencies and departments.

The attached rule amends 4 C.F.R. Part 21 and was published in the Federal Register on August 21, 1980, at pages 55689-92, Volume 45, No. 164.

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Attachment



1 sentence abstract

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other

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Procedures for Decisions on Appropriated Fund Expenditures Which Are of Mutual Concern To Agencies and Labor Organizations

AGENCY: General Accounting Office.

ACTION: Final rule.

SUMMARY: This rule amends GAO's procedures governing requests for decisions in Federal labor-management relations matters. The amendment is necessary because of the enactment of the Civil Service Reform Act of 1978, Pub. L. 95-454. Title VII of that Act, codified at 5 U.S.C. Chapter 71, established a statutory framework for the conduct of labor-management relations in the Federal Government and created a new agency, the Federal Labor Relations Authority, to administer the program. This rule retains existing procedures which provide labor organizations and agencies with access to GAO, but deletes references to obsolete agencies and functions, and provides guidance as to when GAO will defer to procedures established pursuant to 5 U.S.C. Chapter 71.

EFFECTIVE DATE: August 21, 1980.

FOR FURTHER INFORMATION CONTACT: Maralyn G. Blatch, Attorney-Adviser, Office of General Counsel, U.S. General Accounting Office, Washington, D.C. 20548, (202-275-6404).

SUPPLEMENTARY INFORMATION: On March 24, 1980, the General Accounting Office published a proposed rule (45 FR 18940-41) which would amend existing procedures governing requests for decisions in Federal labor-management relations matters. The proposed rule retained procedures providing agencies and labor organizations with access to GAO but, in view of the passage of title

VII of the Civil Service Reform Service Act of 1978, deleted references to obsolete agencies and functions and provided for deference to the jurisdiction of the Federal Labor Relations Authority where appropriate.

Many constructive comments were received, and after careful consideration of those comments, changes have been made in the proposed rule. The major points addressed in the comments, and determinations made in response thereto are discussed below.

—The comments received reflected a wide divergence of views as to GAO's role and functions in general, and our role in relation to the labor-management program established pursuant to title VII of the Civil Service Reform Act, codified at 5 U.S.C. Chapter 71. Several requested more information on this subject. GAO's jurisdiction is based upon title 31 of the United States Code, in particular 31 U.S.C. 74 and 82d. Section 74 provides that balances certified by GAO upon the settlement of public accounts shall be final and conclusive upon the Executive Branch of the Government. Section 74 also gives heads of Federal agencies and disbursing officers the right to request a decision from GAO on any question involving the expenditure of appropriated funds. Section 82d extends the same right to certifying officers.

The labor-management program established by 5 U.S.C. Chapter 71 did not amend 31 U.S.C. 74 and 82d. Accordingly, except to the extent that Congress has indicated a contrary intent, agency heads and authorized certifying or disbursing officers continue to have a statutory right to request a decision from GAO on any matter involving the expenditure of appropriated funds. However, in recognition of the intent of Congress in enacting 5 U.S.C. Chapter 71 and the role of labor organizations and collective bargaining in the civil service, this part provides special procedures which govern requests for decisions on matters which are of mutual concern to agencies and labor organizations. It extends the right to request a decision to labor organizations; provides for service on the parties and the opportunity to comment; authorizes advisory opinions to arbitrators and other neutrals; requires notice to GAO on related matters pending before the Federal Labor Relations Authority; and provides

guidance as to when GAO will, as a matter of policy, defer to the procedures established pursuant to 5 U.S.C. Chapter 71.

Under § 21.1, *Purpose and scope*, the intent is to make clear that agencies and labor unions have equal access to GAO on matters of mutual concern to the agency and the union which involve the expenditure of appropriated funds. This expands the scope of the prior rule which was limited to matters arising under the negotiated agreement or arising from an arbitration award or decision of an administrative body.

—As under the previous rule, § 21.2 extends the right to request a decision to labor organizations representing Federal employees. It was suggested that § 21.2 be revised to permit local labor-relations officials to request a decision from GAO. No change was considered necessary since, as presently worded, agencies and unions are free to designate officials of their choice to request a decision from GAO.

—In response to comments received, the revised § 21.3(d) has been clarified and now explicitly requires notice as to whether the matter submitted to GAO is subject to a negotiated grievance procedure. The parties are also required under § 21.3(d) to give notice if a grievance has been filed or if another procedure has been invoked to adjudicate the same or a substantially similar matter before the Federal Labor Relations Authority, any other administrative body, or any court. The decision as to whether GAO will provide a response is governed by §§ 21.7 and 21.8.

The provisions for service of a copy of the request on the parties in § 21.4 of the final rule elicited several suggestions. Some complained that the requirement for service on the parties was too burdensome for certifying and disbursing officers who are not generally required to comply with more formalized procedures and do not have a labor-relations staff to handle such matters. No change was made in this provision, however, because notice and the opportunity of the parties to present their views is essential on matters of mutual concern. Moreover, the service requirements relate only to matters of mutual concern to agencies and labor organizations which, thus far, constitutes a relatively small portion of

the cases submitted to GAO by certifying and disbursing officers.

It was also suggested that we require service of the request on the head of the agency concerned. The suggestion was not adopted because, under these procedures, the agency will at some level receive notice and be a party to proceedings before GAO. The agency is then free to establish whatever internal requirements it deems appropriate for notice or service on the agency head.

Several different and sometimes conflicting recommendations were received concerning the method for computing the date of service and the time period for submission of a written response. The only changes which have been made are to make it clear that the 20 day periods in § 21.4(c) and § 21.5(b), and the 60 day period in § 21.6 begin with the date of service. Otherwise, our experience, and that of the parties availing themselves of these procedures in the past has been very satisfactory. As presently worded, it has permitted flexibility for all concerned and has encouraged the expeditious issuance of decision. Accordingly, no other changes have been made in these provisions.

A new § 21.5 has been added to provide arbitrators and other neutral parties authorized to administer the provisions of 5 U.S.C. Chapter 71 with access to GAO's procedures. We have received requests from arbitrators and other neutral parties in the past and several commentators asked that our practice of providing assistance to such parties be explicitly stated in the final rule. Under § 21.5, requests for advisory opinions may be submitted to the General Counsel of GAO and may pertain to any matter of mutual concern, including matters subject to grievance and arbitration procedures. In other words, the restrictions in § 21.7(b), Deference to grievance and arbitration procedures established pursuant to 5 U.S.C. Chapter 71, do not apply to requests for advisory opinions from neutral parties.

Service of a request for an advisory opinion on the parties to the dispute or on other interested parties is discretionary with the requesting party, and any person served may submit written comments in response to the request. A copy of the advisory opinion of the General Counsel will be forwarded to the requester and all persons who have been served with a copy of the request. The provisions of § 21.9(b) relating to general distribution of the decisions of the Comptroller General do not apply to advisory opinions.

—The provisions in proposed § 21.5(a) that decisions will normally be issued

within 60 days of receipt of written responses was very well received and has been retained. See the new § 21.6. The provision in the proposed § 21.5(b), relating to the Comptroller General's discretion not to issue a decision, has been moved to new § 21.8.

—Proposed § 21.6, joint requests for decisions, has been deleted because it is essentially covered by a new § 21.7(b) concerning deference to grievance and arbitration procedures under 5 U.S.C. Chapter 71.

—Most of the comments received concerned the issues covered by the new §§ 21.7 and 21.8, that is, the areas in which GAO will defer to the procedures established by 5 U.S.C. Chapter 71, or will otherwise decline to issue a decision. The comments ranged from one extreme to the other. Some urged that we respond to all requests for decisions and others urged that we refrain from deciding all issues which could in any way relate to a matter which may be considered under 5 U.S.C. Chapter 71. Many more comments raised questions as to our intent to issue decisions in specific areas. In response to those comments, we have made several changes. The new § 21.7 gives specific guidance on deference to grievance and arbitration procedures, and the new § 21.8 covers all matters of mutual concern.

Consistent with the intent of Congress in enacting Chapter 71, § 21.7(a) of the final rule makes it clear that we will not review or comment on the merits of an arbitration award which is final and binding pursuant to 5 U.S.C. § 7122 (a) or (b). H.R. Rep. No. 95-1403, 95th Cong., 2d Sess. 56 (1978); S. Rep. No. 95-1272 and H. Rep. No. 95-1717, 95th Cong., 2d Sess. 158 (1978). However, § 21.7(a) also makes it clear that payments made pursuant to a final and binding arbitration award do not serve as precedent for payment in similar situations not covered by the award. Questions as to how to treat other employees similarly situated but not covered by the award may be submitted by anyone authorized to request a decision from GAO. If the matter concerns employees covered by the same collective bargaining agreement or is otherwise of mutual concern to agencies and labor organizations, it must be submitted pursuant to the procedures provided for in this part.

Many of those commenting requested that we consider matters which are at the grievance stage and not yet the subject of an arbitration award. As evident from subsection § 21.7(o), we have determined that since the negotiated grievance procedure is an integral part of the arbitration process, it

would be inappropriate for GAO to respond to requests from either management or union to review any matter which is subject to a negotiated grievance procedure if the other party objects. The parties are expected to avail themselves of the procedures established pursuant to 5 U.S.C. Chapter 71. As stated in subsection (b), however, GAO may provide a response to requests from certifying and disbursing officers, or to requests from management or union if the other party does not object to our review.

Arbitrators and other neutral parties may also request an advisory opinion on such matters pursuant to § 21.5.

Responses to certifying and disbursing officers were provided for because these individuals have statutory authority, independent of agency management, to decline payment of a voucher. Yet, they are not a party to the collective bargaining relationship and do not have direct access to the procedures established by 5 U.S.C. Chapter 71.

Consistent with requests received, responses to joint requests from management and union are provided for because submissions made by mutual agreement of the parties are not viewed as inconsistent with the grievance arbitration process, or the collective bargaining process in general. For purposes of subsection (b) requests will be considered joint where the other party has been served and has not objected to submission of the matter to GAO. This provision has been added because in many instances in the past a labor organization has requested a decision from GAO indicating that the parties decided not to grieve or arbitrate the matter, but the agency has made no submission to GAO, although served with a copy of the union's request for a decision. Though less frequent, this has also happened when the agency files the request for a decision. This new provision puts the parties on notice that, in the absence of any objection, we will assume both parties have agreed to submit the matter to GAO for a decision.

The new § 21.8 reflects our intent to refuse to issue a decision on any matter which is more properly within the jurisdiction of the Federal Labor Relations Authority. This concept had been stated in the Supplementary Information portion of the proposed rule and it was suggested that this intent be explicitly stated in the rule itself. Section 21.8 applies to joint requests, and requests from certifying and disbursing officers covered by § 21.7(b), as well as to all other matters of mutual concern. Thus, on any matter of mutual concern, the Comptroller General

retains the discretion to decline to issue a decision if the matter has been or would be more appropriately submitted to the Federal Labor Relations Authority, a court, or other administrative body, or is unduly speculative or otherwise not appropriate for decision. The determination to decline to issue a decision pursuant to § 21.8 will be made on a case-by-case basis, with due regard to the impact our action may have on the procedures established by 5 U.S.C. Chapter 71.

In response to suggestions received, we have included citations to the statutory basis for our jurisdiction and the relevant legislative history of 5 U.S.C. Chapter 71, where applicable.

Accordingly, 4 CFR Chapter I, Part 21 is amended to read as follows:

PART 21—PROCEDURES FOR DECISIONS ON APPROPRIATED FUND EXPENDITURES WHICH ARE OF MUTUAL CONCERN TO AGENCIES AND LABOR ORGANIZATIONS

Sec.

- 21.1 Purpose and scope.
- 21.2 Who may request a decision.
- 21.3 Contents of a request for a decision.
- 21.4 Service.
- 21.5 Request for an advisory opinion.
- 21.6 Time for issuance of decisions and advisory opinions.
- 21.7 Deference to grievance and arbitration procedures established pursuant to 5 U.S.C. Chapter 71.
- 21.8 Discretion to decline issuance of a decision.
- 21.9 Distribution of decisions.

Authority: Sec. 8, 28 Stat. 207, as amended (31 U.S.C. 74); sec. 3, 55 Stat. 876 (31 U.S.C. 82d).

§ 21.1 Purpose and scope.

This part sets forth the procedures which govern requests for decisions concerning the legality of appropriated fund expenditures on matters of mutual concern to Federal agencies and labor organizations participating in the labor-management program established pursuant to 5 U.S.C. Chapter 71, and other Federal sector labor-management programs. It gives labor organizations and Federal agencies equal access to GAO on any matter of mutual concern involving the expenditure of appropriated funds, and extends the right to request an advisory opinion on such matters to arbitrators and other neutral parties. It also provides guidance as to when GAO will defer to procedures established pursuant to 5 U.S.C. Chapter 71.

§ 21.2 Who may request a decision.

Heads of Federal agencies and departments (or their designees), heads

of labor organizations representing Federal employees (or their designees), and authorized certifying or disbursing officers may request a decision under this part.

§ 21.3 Contents of a request for a decision.

A request for a decision shall be in writing, dated, signed by the requester, addressed to the Comptroller General of the United States, General Accounting Office, Washington, D.C. 20548, and contain as applicable:

(a) The name and address of the party requesting the decision;

(b) A statement of the question to be decided, a presentation of all relevant facts, and a statement of the party's argument;

(c) Copies of all pertinent records and support documents;

(d) Notice as to whether the matter is subject to a negotiated grievance procedure, and whether a grievance has been filed or any other procedure has been invoked to adjudicate the same or a substantially similar matter before the Federal Labor Relations Authority or other administrative body or court; and

(e) A power of attorney or statement of authority to represent if required by 4 CFR Part 1.

§ 21.4 Service.

(a) Any person requesting a decision under this part is responsible for promptly forwarding a copy of the request and supporting documents to all known interested parties. Service shall be made by registered or certified mail or in person. When service is by mail, the date of service shall be the date when the document served is deposited in the United States mail.

(b) A signed and dated statement of service shall be submitted along with the request and indicate the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(c) Any party served or any other person may submit a written response to the request for a decision to the Comptroller General of the United States, General Accounting Office, Washington, D.C. 20548. Any such response should be submitted within 20 calendar days after the date of service of the request in order to ensure that it will be considered. Copies of written responses shall be promptly forwarded to all known interested parties in the manner prescribed in paragraphs (a) and (b) of this section.

§ 21.5 Request for an advisory opinion.

(a) Arbitrators and other neutral parties authorized to administer 5 U.S.C. Chapter 71 may request an advisory opinion on any matter involving the expenditure of appropriated funds which is of mutual concern to Federal agencies and labor organizations. A request for an advisory opinion shall be in writing, dated, signed by the requester, addressed to the General Counsel, U.S. General Accounting Office, Washington D.C. 20548, and contain all of the information referred to in § 21.3 (a) through (d). Consistent with § 21.8, the General Counsel retains the discretion to decline to issue an advisory opinion.

(b) Service of a request for an advisory opinion on the parties to the dispute or on other interested parties is discretionary with the requesting party. If service is made, it shall be in a manner consistent with § 21.4 (a) and (b), except that where the persons served have been previously provided with copies of records and support documents, the requester may instead serve them with a listing of the documents submitted to GAO.

(c) Any party served with a copy of a request for an advisory opinion may submit written comments on the request to the General Counsel, U.S. General Accounting Office, Washington, D.C. 20548. Copies of such comments shall be promptly served on all known interested parties. Comments should be submitted within 20 calendar days after the date of service of the request in order to ensure consideration by the General Counsel.

(d) A copy of the advisory opinion of the General Counsel will be forwarded to the requester and to all persons who have been served with a copy of the request.

§ 21.6 Time for issuance of decisions and advisory opinions.

Decisions and advisory opinions under this part will be issued as expeditiously as possible, normally within 60 calendar days after the expiration of the 20 day period for filing responses pursuant to § 21.4(c) or § 21.5(b). Where a delay is anticipated, interested parties will be notified and provided with a tentative date for issuance of the decision or advisory opinion.

§ 21.7 Deference to grievance and arbitration procedures established pursuant to 5 U.S.C. Chapter 71.

(a) *Final and binding arbitration awards.* Payments made pursuant to an

arbitration award which is final and binding under 5 U.S.C. § 7122 (a) or (b) will be considered conclusive on GAO in its settlement of the accounts involved, and the Comptroller General will not review or comment on the merits of such an award. However, payments made pursuant to such an award do not constitute precedent for payment in other instances not covered by the award.

(b) *Matters subject to a grievance procedure.* The Comptroller General will not issue a decision or comment on the merits of a matter which is subject to a negotiated grievance procedure authorized by 5 U.S.C. 7121, except upon the request of an authorized certifying or disbursing officer, or the joint request of an agency and labor organization. Requests will be considered joint for purposes of this subsection when the other party has been served pursuant to § 21.4 and has not objected to submission of the matter to GAO.

(c) *Claims against the United States.* Except as provided in paragraph (a), nothing in this section restricts or limits an individual's right to have a claim against the United States adjudicated pursuant to part 31 of Title 4, Code of Federal Regulations.

§ 21.8 Discretion to decline issuance of a decision.

The Comptroller General will not issue a decision on (a) any matter which the Comptroller General finds is more properly within the jurisdiction of the Federal Labor Relations Authority or other administrative body or court of competent jurisdiction, or (b) on a matter which the Comptroller General finds is unduly speculative or otherwise not appropriate for decision.

§ 21.9 Distribution of decisions.

(a) A copy of a decision of the Comptroller General will be forwarded to the requester and to all other interested parties of record.

(b) Any person interested in receiving copies of decisions issued under this part may request to be placed on the distribution list maintained for that purpose. Requests should be directed to the Chief, Legal Information and Reference Services, U.S. General Accounting Office, Washington, D.C. 20548.

Elmer B. Staats,

Comptroller General of the United States.

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